

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
)  
All West Communications, Inc., Carbon/Emery )  
Telcom, Inc., Central Utah Telephone, Inc., )  
Hanksville Telcom, Inc., Manti Telephone )  
Company, Skyline Telecom, UBET Telecom, Inc. )  
and Qwest Corporation; )  
)  
Joint Petition for Waiver of the Definition of "Study )  
Area" Contained in Part 36, Appendix--Glossary )  
of the Commission's Rules; )  
)  
Petition for Waiver of Sections 61.41(c) and (d), )  
69.3(e)(11) and 69.605(c) of the Commission's Rules )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 96-45

**REPLY COMMENTS OF PETITIONERS**

Petitioners Qwest Corporation ("Qwest"),<sup>1</sup> and All West Communications, Inc., Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom and UBET Telecom, Inc. (collectively "Acquiring Companies") hereby submit their reply comments in the above-captioned proceeding in support of their requests for waiver of the definition of "study area" in Part 36 of the Federal Communications Commission's ("Commission") rules, exemption from the price cap "all or nothing" rule, and additional waivers to permit the Acquiring Companies to operate their newly

<sup>1</sup> On June 30, 2000, U S WEST, Inc., the parent and sole shareholder of U S WEST Communications, Inc., merged with and into Qwest Communications International Inc. Further, on July 6, 2000, U S WEST Communications, Inc. was renamed Qwest Corporation.

acquired exchanges under the interstate tariff of the National Exchange Carrier Association (“NECA”) as average schedule companies.

The United States Telecom Association (“USTA”) and the National Telephone Cooperative Association (“NTCA”) filed comments in this matter supporting the relief requested by the Petitioners.<sup>2</sup> Beehive Telephone Co., Inc. (“Beehive”) filed comments asking the Commission “to suspend or delay approvals sought herein, and remand for further investigation and recommendations by the Utah Public Service Commission . . . .”<sup>3</sup> Petitioners will not respond to Beehive’s specific allegations, other than to note that they disagree with Beehive’s version of events with regard to the sale of the exchanges at issue. The gist of Beehive’s complaint is that Qwest should have sold certain of the Utah exchanges to Beehive, rather than certain of the Acquiring Companies. While Petitioners believe that Beehive has not accurately presented the facts supporting its objection, there is no need to address the issues raised by Beehive’s allegations because Beehive’s objection fails as a matter of law for several reasons.

As an initial matter, Beehive’s request that this Commission “remand” this matter to the Utah Public Service Commission (“Utah PSC”) for further investigation and recommendations has no basis in law. This Commission is without jurisdiction to “remand” this matter to the Utah PSC. The Utah PSC,

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<sup>2</sup> USTA and NTCA filed their comments on Nov. 2, 2000.

<sup>3</sup> Beehive Comments, filed electronically Nov. 2, 2000 at 1.

pursuant to Order issued September 6, 2000 (the “Order”),<sup>4</sup> has already approved the acquisition of the subject exchanges by the Acquiring Companies from Qwest. In the Order, the Utah PSC approved the stipulation entered into between Qwest, the Acquiring Companies and the Utah Division of Public Utilities, in which the parties found that the transaction was in the public interest.<sup>5</sup> Beehive failed to request timely review of the Order, and the Order is now final and non-appealable under Utah law.

The parties to the sale now seek specific relief from this Commission as requested in their original Petition, including a Part 36 study area waiver to allow each carrier’s study area boundaries to be adjusted based on this sale. There is no basis for this Commission to “remand” this matter to the Utah PSC; this is not an appeal of the Utah PSC’s Order. By the terms of the Order and under Utah law, Beehive has forfeited its right to appeal the Order by failing to timely petition the Utah PSC for review.<sup>6</sup>

Even if Beehive’s contention had merit, that issue is simply not relevant to the relief sought here by Petitioners. With regard to the requested Part 36 waiver,

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<sup>4</sup> In the Matter of the Joint Application of U.S. WEST Communications, Inc., All West Communications, Inc., Carbon/Emery Telecom, Inc., Central Utah Telephone, Inc., Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom, and UBET Telecom, Inc. for Approval of Purchase and Sale of the Various Exchanges and Associated Matters, Docket No. 99-049-65, Report and Order, issued Sep. 6, 2000.

<sup>5</sup> Id. at 8-9. “The transaction should provide benefits to all customers that will be realized from the greater opportunities for service and operating efficiencies. Each Buyer will focus its resources on improving and upgrading the properties it is acquiring.”

<sup>6</sup> Id. at 2; Utah Code Ann. § 54-7-15.

Petitioners demonstrated in their Petition that the requested waiver will not adversely affect the Universal Service Fund support program, that the state commission having regulatory authority does not object to the change, and that the public interest supports granting the waiver. The issue here is not whether a sale to a different buyer might have made more sense -- which is the thrust of Beehive's comments -- the issue here is whether the transaction before the Commission serves the public interest. The Utah PSC has already found that it does.<sup>7</sup>

Further, Beehive had every opportunity to present its arguments to the Utah PSC -- the proper forum for raising this sort of objection. Beehive intervened in the approval docket before the Utah PSC and participated in that docket. Beehive's President, Arthur Brothers, was present at the July 6, 2000 hearing on this matter before the Utah PSC, and voiced his objections at that time. Notwithstanding Mr. Brothers' presentation, the Utah PSC approved the proposed transaction, effectively rejecting Beehive's objection. As a matter of law, then, Beehive's objections were given due consideration in the appropriate forum, and rejected. Beehive's attempt to raise those same objections before this Commission is nothing more than a collateral attack on the Utah PSC's decision approving this transaction.

This Commission should reject Beehive's improper collateral attack on the Utah PSC's Order and expeditiously grant the relief sought by Petitioners in their Petition in this matter.

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<sup>7</sup> Order at 8. "The Independent Telcos have the business, technical, management, and operating experience to serve smaller, more rural communities such as the Exchanges."

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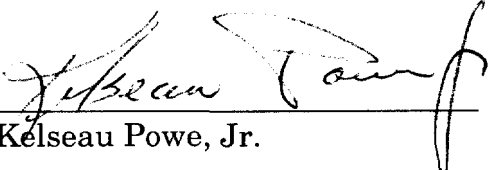
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CENTRAL UTAH TELEPHONE, INC.,  
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November 13, 2000

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on the 13<sup>th</sup> day of November, 2000, I have caused a copy of the foregoing **REPLY COMMENTS OF PETITIONERS** to be served, via hand delivery (marked with an asterisk) or first class United States mail, postage prepaid, upon the persons listed on the attached service list.

  
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